

**Tenth session**

New York, 12-21 December 2011

**Report of the Court on the implementation and operation
of the governance arrangements*****I. Introduction**

1. In 2008, the Court carried out a comprehensive enterprise risk management exercise, during which a number of core risks could be identified to be of sufficient likelihood and impact to merit action by the Court. Among these risks were the related risks of “diverging or conflicting objectives / non-alignment of priorities” and “lack of clarity on responsibilities between different organs.”

2. The Committee on Budget and Finance (hereinafter “the Committee”), at its thirteenth session in August 2009, “requested that the Presidency of the Court submit a report on the measures that the Court is taking to increase clarity on the responsibilities of the different organs and a common understanding throughout the Court of such responsibilities.”¹

3. Following this request, the Court issued its “Report of the Court on measures to increase clarity on the responsibilities of the different organs”² (“the Governance Report”), describing the relevant aspects of the Court’s governance framework, as well as the measures it “has taken, is taking and plans to take” to address the risks highlighted by the Committee.

4. The Committee, at its fourteenth session, welcomed the work of the Court to strengthen the Court’s corporate governance framework. It encouraged the Court “to continue its efforts to strengthen the governance arrangements and to report on their implementation and operation at the sixteenth session of the Committee.”³ The present report describes the measures the Court has taken and is taking in order to further improve its governance framework pursuant to the Governance Report.

II. Inter-organ coordination relating to the Governance Report

5. The Court continues to apply its common, unified system for the setting of Court rules, policies and procedure (“administrative issuances system”). This system seeks to ensure that proper consultation between the Court’s organs (hereinafter “Organs”) takes place before any matter of common concern is promulgated.

*Previously issued as CBF/16/6.

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (ICC-ASP/8/20), vol. II, part B.2, para. 26.

² ICC-ASP/9/34.

³ *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. II, part B.1, para. 48.

6. More broadly, the Coordination Council continuously fulfils its mandate “to discuss and coordinate on, where necessary, the administrative activities of the organs of the Court.”⁴ The Coordination Council continues to meet on a monthly basis and seeks to establish agreement amongst the Principals (President, Registrar, Prosecutor) on administrative matters of importance to the Court, contributing significantly to its sound governance. Moreover, a Coordination Council Tracker System (“CoCo Tracker”) has been adopted that systematically documents and tracks the implementation of agreements reached, as well as ongoing projects.

7. In this context, the three Principals have agreed to make the administrative issuance system a standard agenda point at its monthly Coordination Council meetings. The Registrar accordingly provides a monthly comprehensive update on all human resources-related Administrative Instructions currently in drafting. Likewise, the drafting process of Presidential Directives is periodically documented in the Coordination Council.

8. The Coordination Council has also agreed to identify and map out the Court’s policy gaps that need to be addressed. The policy gap analysis is currently in process.

9. Furthermore, in light of the requirement of coordination between the Office of the Prosecutor (hereinafter “the OTP”) and the other organs on matters of mutual concern, the Court has established a range of inter-organ working groups to act as coordination mechanisms. An updated list of the inter-organ working groups has been compiled, and these will report regularly (at least quarterly) to the Coordination Council on their respective progress.

10. In an effort to better align priorities amongst the Organs and adequately link those strategic priorities to the budget, input has been collated from all concerned Organs in order to define the strategic goals of the Court in 2012. Furthermore, linked to the strategic planning process, a risk assessment has been conducted, and the various risks identified have been enumerated in a comprehensive document. A strategic risk register is being developed and all Organs are working on the implementation of a risk register for operational risks.

11. In accordance with the principles governing relations between the Presidency and the Registry, both Organs interact systematically in a number of forums that meet on a periodic basis: during the monthly meetings of the Coordination Council, where the three Principals consult and coordinate on all operative matters of mutual concern, but also in weekly bilateral meetings between the Registrar and the President.⁵ Also, the President and the Prosecutor meet occasionally to discuss administrative matters of common concern.

III. Specific measures envisaged by the Governance Report

A. Management control system

12. An appropriate reporting mechanism is critical to enabling the Presidency to maintain a broad overview of the Registry’s activities and to provide the Registrar with strategic guidance. A proper, integrated management control system (herein after “MCS”) within the Registry is being designed to cover major projects, budget and human resources matters. It will also serve to enhance efficiency and risk management on the part of the Registry, and hence of the Court.

13. This tool was presented to the Presidency at the end of last year and is currently being finalised within the Registry’s administrative and institutional framework. The MCS will provide the Presidency with the information necessary to maintain strategic oversight of the Registry and provide guidance, without becoming involved in specific operational issues of administration which could be more efficiently dealt with at lower levels.

⁴ Regulations of the Court (as amended on 14 June and 14 November 2007), ICC-BD/01-02-07, Regulation 3.2.

⁵ These meetings serve as a forum between both Principals to raise and discuss any matter where the Presidency’s guidance on strategic or otherwise significant matters is sought, or any other matter of strategic impact is being addressed.

14. In order to materialize the approved MCS concept, the Registry is currently building a system based on technical requirements, as well as a model. This model will define the kind of information to be managed by the system and the way it is to be managed, as well as control levels. Implementation of the system is envisaged to commence by the start of the second half of 2011.

B. Developing a common understanding of services

15. On the basis of Section 6 of the Corporate Governance Statement of the International Criminal Court,⁶ which sets out the foundational principles for the regulation of requests and provision of services between the OTP and the Registry, specific arrangements have been developed and are constantly being improved to establish a common understanding of the details of different services in particular areas.

16. The OTP submits its requests to the Registry for support services in the form of “service requests”. The areas covered by such requests include witness protection, field services, security, medical services, human resources and information technology. With effect from the budgetary year 2011, service requests are submitted in a new, amended format.

17. The process of dealing with service requests includes a cycle of consultations within the concerned Registry sections subsequent to the OTP’s initial submission. The Registry then reverts to the OTP with feedback on how realistic the service requirements are, and based on that, appropriate solutions are sought. Furthermore, regular updates are built into the process, so that changes in circumstances which affect certain service requirements can be communicated and adjusted accordingly.

18. This procedure is functioning satisfactorily for both Organs; all services that the OTP has requested have been provided by the Registry, while small issues that arose were resolved using interim measures.

19. There is certainly room for further refinement and improvement. Service providers could develop and implement a system of monitoring the services based on a set of performance indicators (which the OTP has already incorporated in the new format for request documents) and communicate to the OTP the results and standards of service performance. Further consideration of these matters will take place within discussions concerning the MCS of the Registry.

C. Clarification in relation to areas of potentially overlapping mandates

20. A comprehensive document of understanding between the OTP and the Registry on principles governing the protection of witnesses marks a major achievement in the Organs’ joint effort to clarify their mandates in the key areas of their operations.

21. Between April 2010 and February 2011, the OTP and the Registry drafted and discussed a joint protocol that clarifies the functions of and relations between the OTP and the Registry, in particular the Victims and Witnesses Unit (hereinafter “VWU”), with respect to the protection of persons at risk on account of their interaction with the Prosecution. The Protocol consists of comprehensive agreements on the mandate and standards and procedures for protection. It sets out, inter alia, the general principles of information sharing and cooperation between the OTP and the Registry. Further, it defines the procedures for conducting risk assessments and identifying the appropriate measures for risk treatment, as well as clarifying the respective responsibilities of the OTP and the Registry with regard to the different protection tools.

22. Furthermore, the Court is in process of developing its “Statement of financial internal control”. This document is an important instrument for providing States Parties with assurances regarding sound financial controls within the Court. In addition to the Statement of financial internal control, the Registry and the OTP are also in the process of developing the underlying assurance documents, so that both Organs can properly fulfill their mandates in this regard. The Statement of financial internal control is currently being

⁶ Annex to the Governance Report, ICC-ASP/9/34.

reviewed in consultation with the Audit Committee, in order to ensure that it provides a true picture and respects the different mandates of the Organs.

IV. Conclusion

23. The consistent and continuous implementation of all the measures indicated in the Governance Report to improve the Court's internal governance framework has rendered positive results in a number of instances and areas of the Court. As a result of continuous coordination at the strategic level, agreement between the Registry and the OTP could be reached on a number of contentious issues between the Organs without using the Court's escalation procedure.⁷ Also, at the operational level section heads maintained a high level of efficient cooperation through a number of coordination measures, including:

(a) Early exchange of information on issues of common concern (e.g. the OTP with VWU, Security and Safety Section (hereinafter "SSS") and Field Operations Section (hereinafter "FOS");

(b) Efficient intervention of section heads to resolve contentious matters at the operational level (e.g. the OTP & VWU resolving witness protection issues without escalating to Chambers, unlike early 2010; when such issues were referred directly to Chambers; discussions on policy-setting across the Court, as in the field of human resources, for example; agreement within the Coordination Council to identify and prioritize policy gaps); and

(c) Monthly meetings between the OTP-SSS, the OTP-VWU, the OTP-FOS to discuss outstanding matters and to share information (e.g. information on the OTP's scheduled activities in the Kivus, which helps VWU in planning their Immediate Response System, as well as where to place staff, etc).

24. In light of the above, the Court considers that not only did the Governance Report address adequately the specific needs and concerns of the Court, but it also gave adequate recommendations regarding the management of risks in a more effective and efficient manner. As a result, the Court is functioning throughout more efficiently, with a strengthened internal governance framework; further, the Court is strongly committed to further implementing the governance framework as outlined in the present report.

⁷ See ICC-ASP/9/34, annex, section 6(d).